

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

MARC VEASEY, JANE HAMILTON,)
SERGIO DELEON, FLOYD J. CARRIER,)
ANNA BURNS, MICHAEL MONTEX,)
PENNY POPE, OSCAR ORTIZ, KOBY)
OZIAS, JOHN MELLOR-CRUMLEY, JANE)
DOE, JOHN DOE, LEAGUE OF UNITED)
LATIN AMERICAN CITIZENS (LULAC),)
AND DALLAS COUNTY, TEXAS,)

Plaintiffs,)

v.)

RICK PERRY, Governor of Texas; and JOHN)
STEEN, Texas Secretary of State,)

Defendants.)

UNITED STATES OF AMERICA,)

Plaintiffs,)

TEXAS LEAGUE OF YOUNG VOTERS)
EDUCATION FUND, IMANI CLARK,)
AURICA WASHINGTON, CRYSTAL)
OWENS, AND MICHELLE BESSIAKE,)

Plaintiff-Intervenors,)

TEXAS ASSOCIATION OF HISPANIC)
COUNTY JUDGES AND COUNTY)
COMMISSIONERS, HIDALGO COUNTY,)
AND MARIA LONGORIA BENAVIDES,)

Plaintiff-Intervenors,)

v.)

STATE OF TEXAS, JOHN STEEN, in his)
official capacity as Texas Secretary of State;)
and STEVE McCRAW, in his official capacity)
as Director of the Texas Department of Public)
Safety,)

Defendants.)

CIVIL ACTION NO.

2:13-CV-193 (NGR)

[Lead case]

CIVIL ACTION NO.

2:13-CV-263 (NGR)

[Consolidated case]

TEXAS STATE CONFERENCE OF NAACP)
 BRANCHES; and the MEXICAN)
 AMERICAN LEGISLATIVE CAUCUS OF)
 THE TEXAS HOUSE OF)
 REPRESENTATIVES,)

Plaintiffs,)

v.)

JOHN STEEN, in his official capacity as)
 Secretary of State of Texas; and STEVE)
 McCRAW, in his official capacity as Director)
 of the Texas Department of Public Safety,)

Defendants.)

CIVIL ACTION NO.
 2:13-CV-291 (NGR)
 [Consolidated case]

BELINDA ORTIZ, LENARD TAYLOR,)
 EULALIO MENDEZ JR., LIONEL)
 ESTRADA; ESTELA GARCIA ESPINOSA,)
 ROXANNE HERNANDEZ, LYDIA LARA,)
 MARGARITO MARTINEZ LARA,)
 MAXIMINA MARTINEZ LARA, AND)
 LA UNION DEL PUEBLO ENTERO, INC.)

Plaintiffs,)

v.)

STATE OF TEXAS; JOHN STEEN, in his)
 Official capacity as Texas Secretary of State;)
 And STEVE McCRAW, in his official capacity)
 As Director of the Texas Department of)
 Public Safety,)

Defendants.)

CIVIL ACTION NO.
 2:13-CV-348 (NGR)
 [Consolidated case]

DEFENDANTS' RESPONSE TO THE COURT

The Defendants do not agree to the schedule proposed by the Veasey Plaintiffs. ECF Doc. 161-3. It is not clear that their proposal offers the protections and conditions that Defendants have consistently stated were necessary for their agreement to the discovery process contemplated by the orders. From the outset of

this process, Texas has shared the United States' concerns regarding privacy that are inherent in the production and manipulation of the personal, sensitive data contained in the various state and federal databases at issue in this case. As such, Defendants have worked diligently with the other parties, through the Department of Justice, to achieve consensus on a discovery process that both mitigates these concerns and protects the interests of the State of Texas. Defendants do not fully understand the two-step process contemplated by the Veasey Plaintiffs' proposal, particularly given that Defendants have already shared its preliminary algorithm with at least some Plaintiffs. Perhaps part of the reason that Defendants do not fully comprehend the Veasey Plaintiffs' proposal is that Defendants were never consulted regarding these proposed changes before the filing of either the Joint Motion for Discovery Order and Supplemental Protective Order, ECF No. 160, or the Veasey Plaintiffs' Response to that motion, ECF No. 161. More to the point, when Defendants requested the opportunity to view any changes proposed by the non-US Plaintiffs, and by the Veasey Plaintiffs in particular, prior to the filing of the Joint Motion, they received no response. Exhibit 1, Email from John Scott, February 10, 2014.

At bottom, Defendants cannot agree to any proposal under which Texas unilaterally produces the sensitive, private information contained within its databases unless at least two conditions are clearly met. First, the sensitive, personal information contained in Texas databases shall be disclosed *only* to the United States – who has the necessary capability and practice to handle such

sensitive, personal information. Second, Defendants cannot agree to any scenario in which it is not given ironclad assurances that the database comparison will be done, at least in part, under instructions provided by Defendants. In the parlance of the proposed orders being considered by the Court that means that Defendants be able to provide its own algorithm, if necessary, and that the United States agree to compare the various state and federal databases under that algorithm. Of course, this second condition requires that Defendants be given adequate time to digest the algorithm proposed by the United States and the algorithm responses that are ultimately produced by this process. Any proposed order that does not clearly contain language providing both of these necessary conditions is not agreed to by the Defendants.

To say the least, the process being contemplated already places Defendants in the precarious position of leaving a potentially crucial evidentiary process to be conducted in a black box by an opponent in litigation. Absent clear and unequivocal agreement to these basic conditions, Defendants do not agree to the process currently being considered and will rest on their objections that the data is not discoverable and/or renew its request that the United States produce the various federal databases that the Plaintiffs have put at issue by the allegations contained in the various complaints.

Dated: February 13, 2014

Respectfully submitted,

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/s/ J. Reed Clay, Jr.
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COUNSEL FOR THE STATE OF TEXAS,
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MCCRAW

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2014, I served a true and correct copy of the foregoing document is being served via the Court's ECF system to all counsel of record.

/s/ J. Reed Clay, Jr.

J. REED CLAY, JR.

Special Assistant and Senior Counsel
to the Attorney General